IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.2607 of 2006
Appeal 1251/06

Commissioner of Wealth-tax ,
Madurai. ..Appellant/Appellant

Vs

M/s.Standard Fireworks P Ltd.,
1/3, Thiruthangal Road,
Sivakasi. ..Respondent/Respondent

Appeal under Section 27A of the Wealth-tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Madras, 'C' Bench dated 16.05.2006 in W.T.A. No. 130/Mds/2004 for the assessment year 2001-02. against the order of Commissioner of Wealth Tax (Appeals) II Madurai in WTA NO. 145/04-05 dated 24.09.2004 against the Deputy Commissioner of Income Tax Virudhunagar made in pan/gir no./aaccs/1480 m s1094/dc/vnr DATED 29.03.2004

For Appellant : Mr.J.Naresh Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed by the Revenue under Section 27A of the Wealth-tax Act, 1957 against the order of the Income-tax Appellate Tribunal, Madras, 'C' Bench dated 16.05.2006 in W.T.A. No.130/Mds/2004, raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the land being sold is to be treated as a business asset and exempt from wealth tax

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merely because the builder took possession after the valuation date?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that since the land is in possession of the assessee, it is capable of being used as a business asset and consequently should be treated as exempt, even though it was not actually used for storage of explosives as on the valuation date?"

2. The brief facts leading to the above questions of law are as under:

The assessee is a closely-held Industrial Company engaged in the business of manufacture and sale of fire works. The relevant assessment year is 2001-2002 and the valuation date is 31.03.2001. No Wealth-tax Return was filed by the assessee under Section 16(1) of the Wealth-tax Act ("Act" in short). The Revenue had information to the effect that the assessee having taxable wealth. Hence, notice under Section 17 was issued to the assessee calling for the Wealth-tax Return. In response to the notice, the assessee company filed Wealth-tax Return on 17.04.2003 admitting a gross wealth of Rs.24,64,777/-. The liability of several loan from bank was quantified at Rs.12,58,907/- and hence the return of net wealth amounted to Rs.12,05,870/-. The assessee company is the owner of 6.86 acres of vacant land at Velachery, Chennai in Survey Nos.329, 328/2, 327/1, 256, 325/1, 325/2 and 325/3. The assessee company had not returned the value of the land for the Wealth-tax purpose on the ground that the land was used as a godown for storage of fire works. Because it is a business asset, the assessee claimed exemption from the Wealth-tax Act. The Assessing Officer was of the view that the land was not used for the purpose of business during the year and therefore he brought it to tax. Further, the Assessing Officer found that the assessee had written a letter dated 20.08.2001 to the Chief Controller of Explosives, Nagpur stating that for the last six months the vacant land was not used for storage of fire works and hence, the Explosive Licence might be cancelled. Further, it was found by the Assessing Officer that the assessee entered into a Memorandum of Understanding with a builder for sale of land for a sum of Rs.14 Crores and the assessee received an advance of Rs.12 lakhs on 10.03.2001. In consequence of the same, the builder has taken over possession of the land on 04.06.2001. On the above facts, the Assessing Officer held that the land was not used for the purpose of storing fire works and therefore, he included the value of the said land in the net wealth of the assessee and estimated the value of land at Rs.14 Crores being the sale value of land and completed the assessment. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Wealth-tax (Appeals). The C.W.T.(A) allowed the appeal and directed the Assessing Officer to delete the addition made in respect of the vacant land.

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Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal preferred by the Revenue and confirmed the order of the C.W.T.(A).

3. Learned Standing Counsel appearing for the Revenue submitted that the authorities below failed to note that, in the land at Velachery, Chennai, there were three Magazines (fireworks godown) and when the assessee surrendered Explosive Licence in respect of one Magazine and renewed only in respect of two Magazines, the C.W.T.(A) ought to have held that the Magazine in respect of which license was not renewed was not used for the purpose of business for more than six months as on the valuation date. It is also further submitted that the Memorandum of Understanding was entered by the assessee with the buyer on 28.03.2001 and even prior to this date, the Board of Directors of the assessee company approved the sale of vacant land in the Board Meeting held on 17.03.2001. From this fact, it is evident that the vacant land was not actually used for the purpose of business and hence the same is taxable under the Wealth-tax Act.

4. Heard the counsel. On facts, it is seen that the assessee entered into a Memorandum of Understanding with a builder for sale of the said property and received advance of Rs.14 Crores as follows:

"Advance	10/3/2001		Rs. 12,00,000
	24/5/2001	}	
	22/5/2001	}	
	24/5/2001	}	Rs.2,00,00,000
	31/5/2001		
Before	30/11/2001		Rs.5,00,00,000
Before	31/3/2002		Rs.6,88,00,000
		Total	Rs.14,00,00,000"

There was a Memorandum of Understanding entered into, by the assessee on 28.03.2001 and also advance was received by the assessee as stated above. As per the agreement dated 25.05.2001, the purchaser is entitled to enter the land only after the agreement date. Further, the assessee has renewed its two Explosive Licences upto 31.03.2002. Merely because one Licence was surrendered, that too, after the end of the valuation date, it could not be held that the land cannot be used for storage of fire works. Also it is seen that the said land was not brought to Wealth-tax in earlier years on the ground that the land was used for storage of fire works and the same was used for the purpose of business. There is no factual dispute that the builder took possession of the land only on 04.06.2001 which is much after the valuation date. Merely getting advance or entering into a Memorandum of Understanding does not mean that the land was not

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used for the purpose of business as on the valuation date. The agreement of sale was signed only on 25.05.2001 and merely entering into an agreement of sale does not mean that the land was not used for the purpose of business. The relevant date for the purpose of Wealth-tax assessment is valuation date. In this case, the valuation date is 31.03.2001. The Tribunal as well as the first appellate authority had given a concurrent finding that the land was used for the purpose of the business and the same was taken over only after the valuation date by the purchaser. The reasons given by the authorities below are based on valid materials and evidence and hence we find no error or legal infirmity in the order of the Tribunal and the same does not require interference.

5. Under these circumstances, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

km

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

TO

1. THE ASSISTANT REGISTRAR
INCOME TAX DEPARTMENT
RAJAJI BHAVAN, BESANT NAGAR
CHENNAI 600 090

2. THE COMMISSIONER OF WEALTH TAX
MADURAI

3. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
CHENNAI C BENCH
CHENNAI

4. THE DEPUTY COMMISSIONER OF WEALTH TAX
VIRUDHUNAGAR

5. THE COMMISSIONER OF WEALTH TAX (APPEALS II) MADURAI

+ ONE CC TO MRS. PUSHYA SITARAMAN, ADVOCATE SR NO. 62001

mj(co)
nm(08.01.07)

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